March 21, 2014

The Honorable Sam Johnson
Chairman, Subcommittee on
Social Security
Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

Attention: Kim Hildred

Dear Mr. Chairman:

This is in response to your questions for the record, further to my testimony on January 16, 2014 before the Subcommittee on Social Security, Committee on Ways and Means, at a hearing on a Social Security disability fraud scheme in New York City. I appreciate the opportunity to provide additional information to the Subcommittee. Below are responses to your specific questions.

1. **What recommendations have you made to the Social Security Administration (SSA) to help identify individuals faking mental illness before they are awarded benefits?**

Though not a formal audit recommendation, we have encouraged SSA to evaluate the economic costs and benefits of purchasing and using symptom validity tests (SVT), which can determine whether an individual is exhibiting signs of malingering. In a September 2013 Congressional Response Report, *The Social Security Administration's Policy on Symptom Validity Tests in Determining Disability Claims*, we (1) reviewed SSA's policy that prohibits the purchase of SVTs; (2) assessed the medical community's opinion on the usefulness of SVTs; and (3) determined that other Federal agencies and private disability insurance providers allow the use of SVTs.

While SSA—like other Federal agencies, and private disability insurance providers—considers all relevant evidence in the case record before making a disability determination, the Agency does not allow the use of SVTs. SSA stated that these tests have limited value in proving malingering. However, medical literature and national neuropsychological organizations assert that SVTs are relevant in disability determinations. Moreover, other Federal agencies, such as the Department of Veterans Affairs and the Railroad Retirement Board, allow the purchase and use of SVTs in their disability determination processes. In addition, the three private disability insurance providers we contacted also support the use of SVTs in making claims decisions.

During our review, SSA told us that it was developing a proposal to award a contract for evaluating its SVT policy and the usefulness of SVTs in determining disability. In our final

report, we encouraged SSA to (1) evaluate the economic costs and benefits of purchasing and using SVTs in its disability determination process; and (2) move forward with its plans already in progress in this area. We understand that in September 2013, SSA awarded a contract for studying SVTs. The contractor will: (1) perform a comprehensive review of psychological testing, including SVT; (2) determine the relevance of psychological testing, including SVT, to disability determinations in claims involving physical or mental disorders; and (3) provide guidance to help adjudicators interpret the results of psychological testing, including SVT.

2. What recommendations has your office made regarding preventing fraud in the Continuing Disability Reviews (CDR) mailer process?

Our office has not made any recommendations specifically targeted to fraud in the CDR mailer process. In past years, SSA performed quality reviews of samples of beneficiary responses to CDR mailers, and we are not aware of any concerns those reviews identified relating to fraud. With regard to CDRs in general, OIG audits and recommendations have focused on those processes and practices where we believe fraud, waste, and abuse are more likely to occur. Specifically, we have made numerous recommendations to improve SSA's processes related to work CDRs and full medical CDRs. We would be happy to provide those specific recommendations should you so desire.

3. If the SSA performed CDRs in a timely manner, would fraud conspiracies like those in New York and Puerto Rico have been detected more quickly? How can the SSA use the CDR process to better protect this important program from fraudsters?

We cannot state with any certainty whether conducting CDRs in a timely manner would help us identify fraud conspiracies more quickly, but we believe CDRs are critical to maintaining the overall integrity of SSA programs. Conducting CDRs in a timely manner not only ensures that individual claimants continue to meet eligibility requirements, but it also gives SSA the opportunity to review the entire claims folder and potentially recognize suspicious or unusual factors or trends that could lead to identifying and preventing fraud schemes. Insofar as CDRs can possibly result in the identification of these factors, it is reasonable to state that conducting CDRs timely could possibly identify such factors sooner.

We understand that SSA is undertaking a special initiative to expand its use of data analytics to enhance its ability to detect and prevent disability fraud. Specifically, SSA will apply analytical tools that can determine common characteristics and patterns based on data from past allegations and known cases of fraud. With these tools, SSA expects to prevent more fraudulent claims from being approved. However, SSA could also use these tools to identify individuals who are fraudulently receiving benefits—those who applied under false pretenses as well as those who were at one time legitimately disabled, but whose circumstances changed, causing them to become ineligible. SSA uses a number of characteristics to profile individuals receiving benefits and determine the likelihood of medical improvement. To use the CDR process to better detect fraud, SSA could use analytics to expand on these characteristics and profile individuals who are likely to have improved medically but continue to receive benefits fraudulently.

4. Has your office made recommendations to prevent doctor, facilitator, or claimant representative fraud? Has SSA implemented any of your recommendations thus far?

In *Hearing Office Case Rotation Among Administrative Law Judges*, we recommended that SSA (1) continue monitoring seven hearing offices with rotation issues to ensure the proper resolution of rotation issues; and (2) remind hearing office managers that ALJ coverage of remote sites should be consistent with rotation policy and involve all ALJs to the extent possible. SSA agreed with both recommendations and said it will continue monitoring the hearing offices and communicate information on the rotation policy.

In *The Role of National Hearing Centers in Reducing the Pending Hearings Backlog*, we recommended that SSA ensure steps are taken to prevent claimants from choosing the ALJ hearing their case, such as removing the ALJ's name from all hearing notices and reminding schedulers not to reveal the name of the ALJ when asked by a claimant representative. SSA agreed, and removed the ALJ signature on hearing notices in August 2012. However, subsequent pressure from the claimant representative community led to a reversal of this decision. All hearing notices now include the ALJ's name.

In *Claimant Representatives Barred from Practicing before the Social Security Administration*, we recommended that SSA (1) collect additional claimant representative data that can assist with verification of "good standing"; and (2) develop a pilot to verify whether representatives have been disbarred, suspended, or disqualified against lists maintained by other entities, to determine the costs and benefits of such controls. These entities could include State bars and/or other entities that collect and maintain similar disciplinary data.

SSA agreed with our recommendations and noted it was planning to collect additional electronic information in FY2008 and develop a pilot in FY2009, with this pilot being contingent on available staff resources. Our recommendations tracking system indicates the Agency later took steps to require additional certification by claimant representatives on submitted forms, but it appears the Agency did not create an automated system to verify such information against outside data sources.

5. What is the current status of the Puerto Rico investigation? How has the hotline assisted in the ongoing investigation?

The August 2013 arrest operation in Puerto Rico was the result of a lengthy and complex investigation into widespread disability fraud among doctors, a non-attorney claimant, and numerous beneficiaries. Our joint investigation with the FBI and the Puerto Rico Police Department continues. Of the 75 subjects charged in this case, 34 have entered guilty pleas, and three defendants are awaiting trials slated to begin in April, 2014. Of our three primary targets, one has agreed to plead guilty and the other two are in various stages of guilty plea negotiations with the U.S. Attorney's Office.

To date, the San Juan (Puerto Rico) CDI Unit has received 337 calls to the hotline number established by SSA specifically for individuals to report disability fraud allegations in Puerto Rico. Several callers provided information to us regarding the original doctors and subjects already under investigation; and some calls have also identified additional medical providers and

others who may be engaged in similar schemes. We are thoroughly evaluating this information for further investigation.

6. The New York Cooperative Disability Investigation (CDI) is one of your oldest units, and was essential in identifying this conspiracy. Would you have been able to catch a similar fraudulent scheme in a state that has no access to a CDI Unit?

Yes. We have identified similar fraudulent schemes in areas that did not have a CDI unit; for example, the ongoing Puerto Rico investigation was initiated before the San Juan CDI Unit was established. The CDI initiative, in fact, was a response to several large-scale disability fraud schemes we identified in Georgia and Washington State in the mid-1990s. However, in our experience, DDSs that have access to CDI units are far more likely to identify and refer potential fraudulent schemes to the OIG. For this reason, we strongly support CDI expansion as a critical integrity tool for SSA and the OIG, and we are encouraged by the Acting Commissioner's approval of seven locations for potential CDI expansion by FY2015.

CDI units contribute to identifying organized disability fraud due, in part, to the productive relationships they establish with DDS leadership and personnel. State DDS examiners and analysts are in the best position to identify potential third-party facilitator fraud because they review applications and reports written and submitted by doctors and attorneys. Their positions allow the opportunity to identify suspicious patterns (e.g., identical language in medical reports). It is likely that DDSs with access to a CDI unit have established working relationships with that CDI unit, and are more likely to refer suspicious activity to the OIG than a DDS with no CDI unit in their area. Further, CDI units conduct formal and informal training in their respective DDS agencies, so those DDS personnel are likely to be more mindful of the potential for fraud.

7. In her testimony, the Acting Commissioner indicated that in FY 2013, over 22,500 disability fraud referrals were made to the OIG, of which the OIG opened about 5,300 cases and to date has referred over 100 to the United States Attorney's Office for prosecution. Why is the number of cases opened by the OIG so small? Does the SSA need to train better on the referrals they should be making? What is the number of cases referred for prosecution when you add in State and local prosecutors?

The numbers presented by the Acting Commissioner focused on FY2013 allegations, and what became of them *during* FY2013. An allegation that proceeds all the way to a criminal prosecution takes months to travel that path; indeed, complex cases can take years. So while the Acting Commissioner was correct in stating that over 100 cases *stemming from disability allegations received from SSA in FY2013* were also presented to Federal prosecutors **in** FY2013, this should by no means be interpreted to suggest that the story ends there.

In FY2013, we received more than 141,000 allegations, opened over 8,000 cases, and closed more than 7,900 cases (many of these cases stemming from allegations received in prior fiscal years). Our casework resulted in 1,323 criminal convictions in FY2013—of which about half were based upon referrals from non-SSA sources—and 623 involved disability fraud. In addition, we achieved 326 civil actions or civil monetary penalty actions, a quarter of which

were the result of referrals from sources other than SSA. But investigations and prosecutions do not abide by a fiscal calendar.

Even restricting ourselves to FY2013 allegations and following them as they worked their way through triage, investigation, and prosecution, the Acting Commissioner's numbers are unintentionally misleading. We received 141,000 total allegations in FY2013; among these are the 22,500 disability fraud referrals from SSA—constituting one-third of all disability fraud referrals. These 22,500 included 6,200 CDI allegations that do not anticipate criminal prosecution, as there is no loss to the government. Of the remaining 16,300 allegations, we closed 15,500 for a variety of reasons (statutes of limitations, unsubstantiated fraud, etc.). The 5,300 disability fraud investigations to which the Acting Commissioner refers include non-prosecutable CDI cases; in fact, we opened 888 non-CDI disability fraud investigations, which represents 5 percent of non-CDI allegations, a standard case-opening rate across all allegation sources.

While not all cases opened in FY2013 could possibly reach a conclusion during the same fiscal year, over 600 of the 888 cases have been presented to Federal or State prosecutors to date, and 186 were accepted (69 of these have *already* resulted in convictions or civil judgments or settlements, and the others remain in process). Another 28 of the 888 are awaiting a prosecutorial decision. And while 380 were declined by Federal prosecutors, they may yet be presented to State prosecutors or referred for civil monetary penalties or administrative sanctions.

Less than six months into FY2014, we are pleased with the progress made on SSA's FY2013 referrals, and with the fact that as many as 630 of those 888 investigations may see some form of criminal, civil, or administrative action. Many other allegations from fiscal years prior to 2013, and even some from the current fiscal year, will also result in prosecution and other judicial action as FY2014 continues to unfold.

Finally, while we would not discourage additional training for SSA employees on identifying and referring potential fraud, we do not link the quality of fraud referrals we receive with the rate at which we open investigations from those referrals. We have always and continue to encourage SSA employees to refer any and all potential fraud, waste, and abuse to the OIG, for further evaluation and development by OIG personnel trained to identify prosecutable fraud.

Thank you for the opportunity to elaborate on my testimony before the Subcommittee. I trust that I have been responsive to your request. Should you have further questions, please feel free to contact me, or your staff may contact Special Agent Kristin Klima, OIG Congressional and Intragovernmental Liaison, at (202) 358-6319.

Sincerely,

Patrick P. O'Carroll, Jr.
Inspector General